

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554**

IN THE MATTERS OF:

NATIONAL CITY MORTGAGE CO.

**Petition for Expedited Declaratory Ruling with
Respect to Certain Provisions of the Florida
Statutes**

CONSUMER BANKERS ASSOCIATION

**Petition for Expedited Declaratory Ruling with
Respect to Certain Provisions of the Indiana
Revised Statutes and Indiana Administrative Code**

CONSUMER BANKERS ASSOCIATION

**Petition for Declaratory Ruling with Respect to
Certain Provisions of the Wisconsin Statutes and
Wisconsin Administrative Code**

CG Docket No. 02-278

**REPLY COMMENTS OF THE TENNESSEE REGULATORY AUTHORITY
IN OPPOSITION TO PETITIONS FOR DECLARATORY RULING**

The Tennessee Regulatory Authority ("TRA") files these reply comments with the Federal Communications Commission ("Commission") in opposition to the above-referenced petitions for declaratory ruling filed by Consumer Bankers Association ("Consumer Bankers") on November 19, 2004 and by National City Mortgage Co. ("National City") on November 18, 2004, respectively. The TRA disagrees with the petitions and supports the rationale and

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arguments set forth by the State of Florida, the State of Indiana, the Indiana Office of the Utility Consumer Counselor, and the State of Wisconsin in their responsive filings to the Commission.¹

Consumer Bankers, National City and other petitioners urge the Commission to preempt state do-not-call laws that are more restrictive than the rules applicable under the Telephone Consumer Protection Act, as implemented by the Commission ("Commission Rules"),² to the extent the state laws apply to interstate telemarketing. The TRA strongly opposes the petitions and the argument that the state laws should be preempted.

Consumer Bankers, National City and other petitioners complain about the restrictions of state do-not-call laws and argue that compliance with the laws requires "costly and cumbersome effort"³ and "will likely cause consumer confusion."⁴ These arguments distort the proper focus of the regulations: to protect consumers from unwanted telemarketing calls.⁵ By registering on do-not-call lists, consumers unequivocally express their desire to protect their privacy from telemarketing intrusions. No matter how strict or lenient, the laws do not prevent telemarketers from calling or contacting other consumers who have not registered on the lists.

The Commission Rules and the federal Do-Not-Call registry enhance consumer protection against unwanted telemarketing calls, especially in those states that have not enacted their own do-not-call laws. The federal system, however, does not and should not displace the

¹ Specifically, the *State of Florida's Motion to Dismiss for Lack of Jurisdiction and Other Grounds*, filed on January 11, 2005; *The State of Indiana's Motion to Dismiss the Consumer Bankers Association's Petition on Grounds of Sovereign Immunity*, filed on January 24, 2005; the *State of Indiana's Comments in Opposition to the Consumer Bankers Association's Petition for Declaratory Ruling*, filed on December 2, 2004; the Comments of the Indiana Office of Utility Consumer Counselor, filed on February 2, 2005; the *Comments by the State of Wisconsin Pursuant to 47 C.F.R. §1.41 to Dismiss Petition of the Consumer Bankers Association on Grounds of Sovereign Immunity*, filed on February 3, 2005.

² *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, DA 03-153 (*Report and Order*) 18 F.C.C.R. 14014 (July 3, 2003).

³ *Petition for Declaratory Ruling* (filed by Consumer Bankers Association against Indiana), 5 (November 19, 2004).


⁴ *Petition for Declaratory Ruling* (filed by American Teleservices Association, Inc.), ii (August 24, 2004).

⁵ This is true of the federal law as well as the state laws. According to the Senate, the purposes of the Telephone Consumer Protection Act were to "protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home and to facilitate interstate commerce by restricting certain uses of facsimile (fax) [sic] machines and automatic dialers." S. Rep. No. 102-178, *1 (1991).

systems states have implemented to protect and meet the needs of their citizens. Preemption is neither authorized nor appropriate in this arena. The Telephone Consumer Protection Act specifies that states may impose more restrictive intrastate requirements.⁶ If the requirements are preempted in relation to interstate telemarketing, the states will be forced into two-tiered regulation, to the detriment of the state regulatory agencies and local consumers. Regardless of where a call originates, the harm is done within the home and home state of the recipient consumer. As this Commission has recognized, consumers may be confused by inconsistent restrictions on interstate and intrastate calls "as [consumers] are unlikely to be able to determine whether the [telemarketing] organization is making an intrastate or interstate call."⁷ Moreover, the consumer likely will turn to the state regulatory authority to enforce the do-not-call restrictions, whether the call originated from within or without the state.

For these reasons, the TRA respectfully urges the Commission to adopt the reasoning and conclusions expressed in the responsive filings submitted by the State of Florida, the State of Indiana, the Indiana Office of Utility Consumer Counselor, and the State of Wisconsin.

Respectfully submitted,


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⁶ 47 U.S.C.A. §227(e)(1)(2001).

⁷ *In re Rules and Regulations Implementing Telephone Consumer Protection Act of 1991*, DA 03-2855 (*Report on Regulatory Coordination*) 18 F.C.C.R. 18558 (Sept. 8, 2003). As noted above, American Teleservices asserted that consumers may be confused if state interstate rules differ from federal interstate rules. Consumers certainly will be more confused if different laws apply in their own home state depending on whether the telemarketer calls from within or without the state.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2005, the original of this Reply Comment was filed electronically with the Federal Communications Commission and a true and exact copy of the foregoing has been either hand-delivered or delivered via U.S. Mail, postage pre-paid, to the following persons:

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